

## **Senate Bill No. 1137**

### **CHAPTER 63**

An act to amend Sections 11999.6, 11999.9, 11999.10, and 11999.12 of the Health and Safety Code, and to amend Sections 1210, 1210.1, and 3063.1 of the Penal Code, relating to drug treatment, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 12, 2006. Filed with  
Secretary of State July 12, 2006.]

#### **LEGISLATIVE COUNSEL'S DIGEST**

**SB 1137, Ducheny. Drug treatment.**

Existing law, the Substance Abuse and Crime Prevention Act of 2000, was enacted by the voters at the November 2000 general election. Amendment of the act by the Legislature requires a  $\frac{2}{3}$  vote of both houses of the Legislature. The act requires all amendments to it to further the act and be consistent with its purposes. The act defines "drug treatment program" for purposes of the act, and specifically excludes in-custody drug treatment from that definition.

The act creates a Substance Abuse Treatment Trust Fund to provide moneys to cover county costs associated with drug treatment programs, as specified. The act also requires annual and long-term effectiveness and financial impact studies on the programs funded by the act as well as periodic audits of the expenditures.

This bill would specify, in addition, that the moneys provided by the act cannot be used to fund in any way drug treatment courts or supervision associated with the drug treatment courts. This bill would also provide for 3-, 2-year followup effectiveness and fiscal impact studies, instead of the annual studies and require the department to submit annual reports on the people served as a result of this act. It would also revise the items to be included in the study. This bill would permit the department to require a county to undertake a corrective action if a periodic audit determines the county has spent money provided by the act not in accordance with the act.

The act defines "drug treatment program" as state licensed or community facilities providing a specified list of services including halfway house treatments, drug prevention courses, and relapse and severe dependence issues.

This bill would remove those elements of the definition of "drug treatment program" and add aftercare services.

The act defines "successful completion of treatment" as a defendant who has completed the prescribed course of treatment and, as a result, there is reasonable cause to believe that the defendant will not abuse controlled substances in the future.

This bill would instead define “successful completion of treatment” as a defendant who has completed the prescribed course of treatment. Completion of treatment would not mean cessation of narcotic replacement therapy.

The act requires any person convicted of a nonviolent drug possession offense to receive probation. As a condition of probation, the court is required to require a defendant to participate in, and complete, an appropriate drug treatment program. The act prohibits the imposition of incarceration as a condition of probation.

This bill would require drug testing as a condition of probation. The bill would require a person subject to the act to be monitored by the court, as specified.

The act does not apply to a defendant who has been convicted of one or more violent or serious felonies, unless the nonviolent drug possession offense occurred more than 5 years after the defendant was free from custody for the prior offense and from the commission of other types of crimes against a person.

This bill would, provide that a person who has previously served 3 separate prison terms for non-drug-related felonies, or a person who has been convicted of a misdemeanor or a felony at least 5 times within the prior 30 months, may be excluded from treatment if the court makes certain findings. The bill would provide that the court shall state its findings, and the reasons for those findings, on the record.

The act does not apply to any defendant who, while using a firearm unlawfully possesses or is unlawfully under the influence of certain controlled substances.

This bill would instead make its provisions inapplicable to any defendant who, while armed with a deadly weapon unlawfully possesses or is under the influence of certain controlled substances.

Under the act, a defendant may petition the sentencing court for dismissal of the charges at any time after completion of drug treatment.

This bill would require the treatment provider to submit the treatment plan and regular reports to the probation department. Additionally, this bill would authorize the court, after a hearing to determine whether the defendant has successfully completed treatment and probation, including refraining from the use of drugs after completion of treatment, to set the conviction aside, as specified.

Under the act, once the indictment, complaint, or information is dismissed, a record pertaining to the arrest and conviction for that offense may not be used to deny the defendant employment.

Under the act, if a defendant violates probation, as specified, the court may revoke probation or it may intensify or alter the drug treatment plan.

This bill would authorize a court to also order incarceration for a specified period, in order to enhance treatment compliance, and in some circumstances, to order the defendant to enter a residential drug treatment program, if available, or be placed in a county jail for not more than 10

days for detoxification purposes only. This bill would however, provide that no incarceration costs will be reimbursed from the fund.

Existing law, with some exceptions, prohibits the suspension or revocation of parole for commission of a nonviolent drug possession offense or violating any drug-related condition of parole. Further, existing law prescribes the steps the Parole Authority is to take upon this type of violation, and the actions that any drug treatment provider must thereafter take, as specified. Drug treatment services are not to be required as a condition of parole for longer than 12 months.

This bill would authorize the Department of Corrections and Rehabilitation, Division of Adult Parole Operations to make a finding that treatment beyond 12 months is necessary, and under those conditions, treatment may be extended to 24 months. The bill would make clarifying changes to related provisions.

Because the bill would increase punishment for crimes, including authorizing jail time, the bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would declare that it is to take effect immediately as an urgency statute.

Further, this bill would provide that if any provision is found to be invalid its provisions shall be submitted to the voters at the next statewide election.

*The people of the State of California do enact as follows:*

SECTION 1. The Legislature finds and declares the following:

(a) On November 7, 2000, the people of the State of California enacted the Substance Abuse and Crime Prevention Act of 2000 (hereinafter the act), codified in Sections 11999.5, 11999.6, 11999.9, 11999.10, and 11999.12 of the Health and Safety Code, and Sections 1210, 1210.1, and 3063.1 of the Penal Code to provide community-based substance abuse treatment programs for nonviolent defendants, probationers and parolees charged with simple drug possession or drug use offenses.

(b) The act provided an appropriation from the General Fund to the Substance Abuse Treatment Trust Fund in the amount of one hundred and twenty million dollars (\$120,000,000) annually through the 2005–06 fiscal year with any additional appropriation dependent on review and action by the Legislature.

(c) Each year following the implementation of the act the Department of Alcohol and Drug Programs (hereinafter the department) was required and did in fact conduct a study to evaluate the effectiveness and financial impact of the programs which were funded pursuant to the act. The studies

have focused on the implementation process, participant demographics and treatment completion rates as well as other impacts and issues the department identified. Reports were submitted to the Legislature by the department.

(d) In addition, the department contracted, as required by the act, with a public university, the University of California at Los Angeles (hereinafter UCLA) to evaluate the effectiveness and financial impact of the programs which were funded pursuant to the requirements of this act and to report findings that were in fact forwarded to the Legislature by the department.

(e) The UCLA evaluations have found that approximately 30 percent of referred SACPA offenders do not enter treatment. Judicial monitoring, through dedicated court calendars, collaboration and coordination between the courts, probation and treatment, as demonstrated by drug courts, would enhance entry, retention, and completion of treatment by offenders.

(f) The UCLA evaluations have found that 34 percent of those who do in fact enter treatment complete that treatment. This completion rate, as well as retention rates, can be improved through the enhancement of compliance with treatment, as well as tailoring treatment to the needs of offenders following drug-related violations of probation to assure that the level and duration of treatment they are assessed or reassessed to overcome addiction, including detoxification and residential services, are provided, and that treatment be of sufficient duration to meet individual needs of defendants.

(g) SACPA does not specifically address the use of short periods of jail time as a motivational tool to hold SACPA offenders accountable to enter and stay in treatment. Studies have reported that drug court clients were more likely to enter treatment, remained in treatment significantly longer, and engaged in significantly less drug use when they received swift and sure sanctions and rewards, including the possibility of brief periods of jail time during the course of treatment. Therefore, sanctions including short periods of jail time for relapsing, problematic, or recalcitrant offenders, on a showing of need after consideration of important treatment and other factors, should be available, not as a substitute for treatment but as a tool to motivate and hold offenders accountable.

(h) The UCLA evaluations speak to the need to verify self-reported drug use by drug testing. Drug testing is widely accepted by treatment providers as an integral component of treatment. In addition, test results are needed to assist providers in adjusting treatment plans. Therefore, courts shall require drug testing as a condition of probation, commensurate with treatment needs.

(i) The UCLA evaluations also speak to the high cost in terms of arrests and convictions of violent crimes, property crimes, and sex crimes of those presently eligible defendants who have five or more convictions in the 30-month period prior to their SACPA eligible arrests in comparison to the typical SACPA offender, and recommend that the Legislature may wish to consider possible changes as to the eligibility of these offenders who UCLA found comprise 1.6 percent of the total number of offenders

eligible for SACPA, yet had postconviction crime costs that were 10 times higher than the costs for the typical or median SACPA offender during the 30-month followup study period.

(j) It is the intent of the Legislature, therefore, to do all of the following to further the purposes of the act:

(1) Maintain the General Fund transfer to the Substance Abuse Treatment Trust Fund, conditioned on modifications to the SACPA program that will improve outcomes and promote accountability consistent with the act and to further the purposes of the act.

(2) Provide for closer judicial monitoring through dedicated calendars and close collaboration between the court, probation, and treatment to improve offender outcomes.

(3) Provide treatment, including detoxification and residential services that are tailored to the individual needs of offenders, and of sufficient duration to improve completion rates. In addition, permit judicial discretion to provide offenders additional opportunities following a third drug-related violation of probation, and first non-drug-related violation of probation to complete treatment, as well as, after a hearing, to remove offenders from the program who pose a danger to the public and, in addition, will not benefit from treatment.

(4) Provide brief jail sanctions to enhance accountability and as a motivational tool to improve the number of defendants who enter treatment, remain in treatment, and complete treatment and probation consistent with the purposes of the act.

(5) Mandate drug testing as a treatment tool as well as a method to assure accountability.

(6) Provide that offenders who have five or more prior convictions at the time they commit a SACPA eligible offense are presumed to be eligible for SACPA. However, they may be found ineligible by the judge after consideration and findings at a hearing, if the offender poses a danger to the public or would not benefit from treatment.

(7) It is also the intent of the Legislature to address additional issues that need clarification, or were not adequately addressed by the act, that need to be resolved to further the purposes of the act, consistent with the act.

SEC. 2. Section 11999.6 of the Health and Safety Code is amended to read:

11999.6. Moneys deposited in the Substance Abuse Treatment Trust Fund shall be distributed annually by the Secretary of the Health and Human Services Agency through the State Department of Alcohol and Drug Programs to counties to cover the costs of placing persons in and providing drug treatment programs under this act, and vocational training, family counseling, and literacy training under this act. Additional costs that may be reimbursed from the Substance Abuse Treatment Trust Fund include probation department costs, court monitoring costs and any miscellaneous costs made necessary by the provisions of this act other than drug testing services of any kind. Incarceration costs cannot be reimbursed

from the fund. Those moneys shall be allocated to counties through a fair and equitable distribution formula that includes, but is not limited to, per capita arrests for controlled substance possession violations and substance abuse treatment caseload, as determined by the department as necessary to carry out the purposes of this act. The department may reserve a portion of the fund to pay for direct contracts with drug treatment service providers in counties or areas in which the director of the department has determined that demand for drug treatment services is not adequately met by existing programs. However, nothing in this section shall be interpreted or construed to allow any entity to use funds from the Substance Abuse Treatment Trust Fund to supplant funds from any existing fund source or mechanism currently used to provide substance abuse treatment. In addition, funds from the Substance Abuse Treatment Trust Fund shall not be used to fund in any way the drug treatment courts established pursuant to Article 2 (commencing with Section 11970.1) or Article 3 (commencing with Section 11970.4) of Chapter 2 of Part 3 of Division 10.5, including drug treatment or probation supervision associated with those drug treatment courts.

SEC. 3. Section 11999.9 of the Health and Safety Code is amended to read:

11999.9. (a) The department shall conduct three two-year followup studies to evaluate the effectiveness and financial impact of the programs that are funded pursuant to the requirements of this act, and submit those studies to the Legislature no later than January 1, 2009, January 1, 2011, and January 1, 2013, respectively. The evaluation studies shall include, but not be limited to, a study of the implementation process, a review of lower incarcerations costs, reductions in crime, reduced prison and jail construction, reduced welfare costs, the adequacy of funds appropriated, and other impacts or issues the department can identify, in addition to all of the following:

(1) Criminal justice measures on rearrests, jail and prison days averted, and crime trends.

(2) A classification, in summary form, of rearrests as having occurred as a result of:

(A) A parole violation.

(B) A parole revocation.

(C) A probation violation.

(D) A probation revocation.

(3) A classification, in summary form, of the disposition of crimes committed in terms of whether the person was:

(A) Retained on probation.

(B) Sentenced to jail.

(C) Sentenced to prison.

(4) Treatment measures on completion rates and quality of life indicators, such as alcohol and drug used, employment, health, mental health, and family and social supports.

(5) A separate discussion of the information described in paragraphs (1) to (3), inclusive, for offenders whose primary drug of abuse was methamphetamine or who were arrested for possession or use of methamphetamine and, commencing with the report due on or before January 1, 2009, the report shall include a separate analysis of the costs and benefits of treatment specific to these methamphetamine offenders.

(b) In addition to studies to evaluate the effectiveness and financial impact of the programs that are funded pursuant to the requirements of this act, the department shall produce an annual report detailing the number and characteristics of participants served as a result of this act, and the related costs.

SEC. 4. Section 11999.10 of the Health and Safety Code is amended to read:

11999.10. The department shall allocate up to 0.5 percent of the fund's total moneys each year to fund the costs of the studies required in Section 11999.9 by a public or private university.

SEC. 5. Section 11999.12 of the Health and Safety Code is amended to read:

11999.12. The department shall conduct periodic audits of the expenditures made by any county that is funded, in whole or in part, with funds provided by this act. Counties shall repay to the department any funds that are not spent in accordance with the requirements of this act. The department may require a corrective action by the county in the place of repayment, as determined by the department.

SEC. 6. Section 1210 of the Penal Code is amended to read:

1210. As used in Sections 1210.1 and 3063.1 of this code, and Division 10.8 (commencing with Section 11999.4) of the Health and Safety Code, the following definitions apply:

(a) The term "nonviolent drug possession offense" means the unlawful personal use, possession for personal use, or transportation for personal use of any controlled substance identified in Section 11054, 11055, 11056, 11057 or 11058 of the Health and Safety Code, or the offense of being under the influence of a controlled substance in violation of Section 11550 of the Health and Safety Code. The term "nonviolent drug possession offense" does not include the possession for sale, production, or manufacturing of any controlled substance and does not include violations of Section 4573.6 or 4573.8.

(b) The term "drug treatment program" or "drug treatment" means a state licensed or certified community drug treatment program, which may include one or more of the following: drug education, outpatient services, narcotic replacement therapy, residential treatment, detoxification services, and aftercare services. The term "drug treatment program" or "drug treatment" includes a drug treatment program operated under the direction of the Veterans Health Administration of the Department of Veterans Affairs or a program specified in Section 8001. That type of program shall be eligible to provide drug treatment services without regard to the licensing or certification provisions required by this subdivision. The term

“drug treatment program” or “drug treatment” does not include drug treatment programs offered in a prison or jail facility.

(c) The term “successful completion of treatment” means that a defendant who has had drug treatment imposed as a condition of probation has completed the prescribed course of drug treatment as recommended by the treatment provider and ordered by the court and, as a result, there is reasonable cause to believe that the defendant will not abuse controlled substances in the future. Completion of treatment shall not require cessation of narcotic replacement therapy.

(d) The term “misdemeanor not related to the use of drugs” means a misdemeanor that does not involve (1) the simple possession or use of drugs or drug paraphernalia, being present where drugs are used, or failure to register as a drug offender, or (2) any activity similar to those listed in (1).

SEC. 7. Section 1210.1 of the Penal Code is amended to read:

1210.1. (a) Notwithstanding any other provision of law, and except as provided in subdivision (b), any person convicted of a nonviolent drug possession offense shall receive probation. As a condition of probation the court shall require participation in and completion of an appropriate drug treatment program. The court shall impose appropriate drug testing as a condition of probation. The court may also impose, as a condition of probation, participation in vocational training, family counseling, literacy training and/or community service. A court may not impose incarceration as an additional condition of probation. Aside from the limitations imposed in this subdivision, the trial court is not otherwise limited in the type of probation conditions it may impose. Probation shall be imposed by suspending the imposition of sentence. No person shall be denied the opportunity to benefit from the provisions of the Substance Abuse and Crime Prevention Act of 2000 based solely upon evidence of a co-occurring psychiatric or developmental disorder. To the greatest extent possible, any person who is convicted of, and placed on probation pursuant to this section for a nonviolent drug possession offense shall be monitored by the court through the use of a dedicated court calendar and the incorporation of a collaborative court model of oversight that includes close collaboration with treatment providers and probation, drug testing commensurate with treatment needs, and supervision of progress through review hearings.

In addition to any fine assessed under other provisions of law, the trial judge may require any person convicted of a nonviolent drug possession offense who is reasonably able to do so to contribute to the cost of his or her own placement in a drug treatment program.

(b) Subdivision (a) shall not apply to any of the following:

(1) Any defendant who previously has been convicted of one or more violent or serious felonies as defined in subdivision (c) of Section 667.5 or subdivision (c) of Section 1192.7, respectively, unless the nonviolent drug possession offense occurred after a period of five years in which the defendant remained free of both prison custody and the commission of an



offense that results in a felony conviction other than a nonviolent drug possession offense, or a misdemeanor conviction involving physical injury or the threat of physical injury to another person.

(2) Any defendant who, in addition to one or more nonviolent drug possession offenses, has been convicted in the same proceeding of a misdemeanor not related to the use of drugs or any felony.

(3) Any defendant who, while armed with a deadly weapon, with the intent to use the same as a deadly weapon, unlawfully possesses or is under the influence of any controlled substance identified in Section 11054, 11055, 11056, 11057, or 11058 of the Health and Safety Code.

(4) Any defendant who refuses drug treatment as a condition of probation.

(5) Any defendant who has two separate convictions for nonviolent drug possession offenses, has participated in two separate courses of drug treatment pursuant to subdivision (a), and is found by the court, by clear and convincing evidence, to be unamenable to any and all forms of available drug treatment, as defined in subdivision (b) of Section 1210. Notwithstanding any other provision of law, the trial court shall sentence that defendant to 30 days in jail.

(c) (1) Any defendant who has previously been convicted of at least three non-drug-related felonies for which the defendant has served three separate prison terms within the meaning of subdivision (b) of Section 667.5 shall be presumed eligible for treatment under subdivision (a). The court may exclude such a defendant from treatment under subdivision (a) where the court, pursuant to the motion of the prosecutor or its own motion, finds that the defendant poses a present danger to the safety of others and would not benefit from a drug treatment program. The court shall, on the record, state its findings, the reasons for those findings.

(2) Any defendant who has previously been convicted of a misdemeanor or felony at least five times within the prior 30 months shall be presumed to be eligible for treatment under subdivision (a). The court may exclude such a defendant from treatment under subdivision (a) if the court, pursuant to the motion of the prosecutor, or on its own motion, finds that the defendant poses a present danger to the safety of others or would not benefit from a drug treatment program. The court shall, on the record, state its findings and the reasons for those findings.

(d) Within seven days of an order imposing probation under subdivision (a), the probation department shall notify the drug treatment provider designated to provide drug treatment under subdivision (a). Within 30 days of receiving that notice, the treatment provider shall prepare a treatment plan and forward it to the probation department for distribution to the court and counsel. The treatment provider shall provide to the probation department standardized treatment progress reports, with minimum data elements as determined by the department, including all drug testing results. At a minimum, the reports shall be provided to the court every 90 days, or more frequently, as the court directs.

(1) If at any point during the course of drug treatment the treatment provider notifies the probation department and the court that the defendant is unamenable to the drug treatment being provided, but may be amenable to other drug treatments or related programs, the probation department may move the court to modify the terms of probation, or on its own motion, the court may modify the terms of probation after a hearing to ensure that the defendant receives the alternative drug treatment or program.

(2) If at any point during the course of drug treatment the treatment provider notifies the probation department and the court that the defendant is unamenable to the drug treatment provided and all other forms of drug treatment programs pursuant to subdivision (b) of Section 1210, the probation department may move to revoke probation. At the revocation hearing, if it is proved that the defendant is unamenable to all drug treatment programs pursuant to subdivision (b) of Section 1210, the court may revoke probation.

(3) Drug treatment services provided by subdivision (a) as a required condition of probation may not exceed 12 months, unless the court makes a finding supported by the record, that the continuation of treatment services beyond 12 months is necessary for drug treatment to be successful. If such a finding is made, the court may order up to two six-month extensions of treatment services. The provision of treatment services under the Substance Abuse and Crime Prevention Act of 2000 shall not exceed 24 months.

(e) (1) At any time after completion of drug treatment and the terms of probation, the court shall conduct a hearing, and if the court finds that the defendant successfully completed drug treatment, and substantially complied with the conditions of probation, including refraining from the use of drugs after the completion of treatment, the conviction on which the probation was based shall be set aside and the court shall dismiss the indictment, complaint, or information against the defendant. In addition, except as provided in paragraphs (2) and (3), both the arrest and the conviction shall be deemed never to have occurred. The defendant may additionally petition the court for a dismissal of charges at any time after completion of the prescribed course of drug treatment. Except as provided in paragraph (2) or (3), the defendant shall thereafter be released from all penalties and disabilities resulting from the offense of which he or she has been convicted.

(2) Dismissal of an indictment, complaint, or information pursuant to paragraph (1) does not permit a person to own, possess, or have in his or her custody or control any firearm capable of being concealed upon the person or prevent his or her conviction under Section 12021.

(3) Except as provided below, after an indictment, complaint, or information is dismissed pursuant to paragraph (1), the defendant may indicate in response to any question concerning his or her prior criminal record that he or she was not arrested or convicted for the offense. Except as provided below, a record pertaining to an arrest or conviction resulting

in successful completion of a drug treatment program under this section may not, without the defendant's consent, be used in any way that could result in the denial of any employment, benefit, license, or certificate.

Regardless of his or her successful completion of drug treatment, the arrest and conviction on which the probation was based may be recorded by the Department of Justice and disclosed in response to any peace officer application request or any law enforcement inquiry. Dismissal of an information, complaint, or indictment under this section does not relieve a defendant of the obligation to disclose the arrest and conviction in response to any direct question contained in any questionnaire or application for public office, for a position as a peace officer as defined in Section 830, for licensure by any state or local agency, for contracting with the California State Lottery, or for purposes of serving on a jury.

(f) (1) If probation is revoked pursuant to the provisions of this subdivision, the defendant may be incarcerated pursuant to otherwise applicable law without regard to the provisions of this section. The court may modify or revoke probation if the alleged violation is proved.

(2) If a defendant receives probation under subdivision (a), and violates that probation either by committing an offense that is not a nonviolent drug possession offense, or by violating a non-drug-related condition of probation, and the state moves to revoke probation, the court may remand the defendant for a period not exceeding 30 days during which time the court may receive input from treatment, probation, the state, and the defendant, and the court may conduct further hearings as it deems appropriate to determine whether or not probation should be reinstated under this section. If the court reinstates the defendant on probation, the court may modify the treatment plan and any other terms of probation, and continue the defendant in a treatment program under the Substance Abuse and Crime Prevention Act of 2000. If the court reinstates the defendant on probation, the court may, after receiving input from the treatment provider and probation, if available, intensify or alter the treatment plan under subdivision (a), and impose sanctions, including jail sanctions not exceeding 30 days, a tool to enhance treatment compliance.

(3) (A) If a defendant receives probation under subdivision (a), and violates that probation either by committing a nonviolent drug possession offense, or a misdemeanor for simple possession or use of drugs or drug paraphernalia, being present where drugs are used, or failure to register as a drug offender, or any activity similar to those listed in subdivision (d) of Section 1210, or by violating a drug-related condition of probation, and the state moves to revoke probation, the court shall conduct a hearing to determine whether probation shall be revoked. The trial court shall revoke probation if the alleged probation violation is proved and the state proves by a preponderance of the evidence that the defendant poses a danger to the safety of others. If the court does not revoke probation, it may intensify or alter the drug treatment plan and in addition, if the violation does not involve the recent use of drugs as a circumstance of the violation, including, but not limited to, violations relating to failure to appear at

treatment or court, noncompliance with treatment, and failure to report for drug testing, the court may impose sanctions including jail sanctions that may not exceed 48 hours of continuous custody as a tool to enhance treatment compliance and impose other changes in the terms and conditions of probation. The court shall consider, among other factors, the seriousness of the violation, previous treatment compliance, employment, education, vocational training, medical conditions, medical treatment, including narcotics replacement treatment, and including the opinion of the defendant's licensed and treating physician if immediately available and presented at the hearing, child support obligations, and family responsibilities. The court shall consider additional conditions of probation, which may include, but are not limited to, community service and supervised work programs. If one of the circumstances of the violation involves recent drug use, as well as other circumstances of violation, and the circumstance of recent drug use is demonstrated to the court by satisfactory evidence and a finding made on the record, the court may, after receiving input from treatment and probation, if available, direct the defendant to enter a licensed detoxification or residential treatment facility, and if there is no bed immediately available in such a facility, the court may order that the defendant be confined in a county jail for detoxification purposes only, if the jail offers detoxification services, for a period not to exceed 10 days. The detoxification services must provide narcotic replacement therapy for those defendants presently actually receiving narcotic replacement therapy.

(B) If a defendant receives probation under subdivision (a), and for the second time violates that probation either by committing a nonviolent drug possession offense, or a misdemeanor for simple possession or use of drugs or drug paraphernalia, being present where drugs are used, or failure to register as a drug offender, or any activity similar to those listed in subdivision (d) of Section 1210, or by violating a drug-related condition of probation, and the state moves to revoke probation, the court shall conduct a hearing to determine whether probation shall be revoked. The trial court shall revoke probation if the alleged probation violation is proved and the state proves by a preponderance of the evidence either that the defendant poses a danger to the safety of others or is unamenable to drug treatment. In determining whether a defendant is unamenable to drug treatment, the court may consider, to the extent relevant, whether the defendant (i) has committed a serious violation of rules at the drug treatment program, (ii) has repeatedly committed violations of program rules that inhibit the defendant's ability to function in the program, or (iii) has continually refused to participate in the program or asked to be removed from the program. If the court does not revoke probation, it may intensify or alter the drug treatment plan, and may, in addition, if the violation does not involve the recent use of drugs as a circumstance of the violation, including, but not limited to, violations relating to failure to appear at treatment or court, noncompliance with treatment, and failure to report for drug testing, impose sanctions including jail sanctions that may not exceed

120 hours of continuous custody as a tool to enhance treatment compliance and impose other changes in the terms and conditions of probation. The court shall consider, among other factors, the seriousness of the violation, previous treatment compliance, employment, education, vocational training, medical conditions, medical treatment, including narcotics replacement treatment, and including the opinion of the defendant's licensed and treating physician if immediately available and presented at the hearing, child support obligations, and family responsibilities. The court shall consider additional conditions of probation, which may include, but are not limited to, community service and supervised work programs. If one of the circumstances of the violation involves recent drug use, as well as other circumstances of violation, and the circumstance of recent drug use is demonstrated to the court by satisfactory evidence and a finding made on the record, the court may, after receiving input from treatment and probation, if available, direct the defendant to enter a licensed detoxification or residential treatment facility, and if there is no bed immediately available in the facility, the court may order that the defendant be confined in a county jail for detoxification purposes only, if the jail offers detoxification services, for a period not to exceed 10 days. Detoxification services must provide narcotic replacement therapy for those defendants presently actually receiving narcotic replacement therapy.

(C) If a defendant receives probation under subdivision (a), and for the third or subsequent time violates that probation either by committing a nonviolent drug possession offense, or by violating a drug-related condition of probation, and the state moves for a third or subsequent time to revoke probation, the court shall conduct a hearing to determine whether probation shall be revoked. If the alleged probation violation is proved, the defendant is not eligible for continued probation under subdivision (a) unless the court determines that the defendant is not a danger to the community and would benefit from further treatment under subdivision (a). The court may then either intensify or alter the treatment plan under subdivision (a) or transfer the defendant to a highly structured drug court. If the court continues the defendant in treatment under subdivision (a), or drug court, the court may impose appropriate sanctions including jail sanctions as the court deems appropriate.

(D) If a defendant on probation at the effective date of this act for a nonviolent drug possession offense violates that probation either by committing a nonviolent drug possession offense, or a misdemeanor for simple possession or use of drugs or drug paraphernalia, being present where drugs are used, or failure to register as a drug offender, or any activity similar to those listed in subdivision (d) of Section 1210, or by violating a drug-related condition of probation, and the state moves to revoke probation, the court shall conduct a hearing to determine whether probation shall be revoked. The trial court shall revoke probation if the alleged probation violation is proved and the state proves by a preponderance of the evidence that the defendant poses a danger to the

safety of others. If the court does not revoke probation, it may modify or alter the treatment plan, and in addition, if the violation does not involve the recent use of drugs as a circumstance of the violation, including, but not limited to, violations relating to failure to appear at treatment or court, noncompliance with treatment, and failure to report for drug testing, the court may impose sanctions including jail sanctions that may not exceed 48 hours of continuous custody as a tool to enhance treatment compliance and impose other changes in the terms and conditions of probation. The court shall consider, among other factors, the seriousness of the violation, previous treatment compliance, employment, education, vocational training, medical conditions, medical treatment, including narcotics replacement treatment, and including the opinion of the defendant's licensed and treating physician if immediately available and presented at the hearing, child support obligations, and family responsibilities. The court shall consider additional conditions of probation, which may include, but are not limited to, community service and supervised work programs. If one of the circumstances of the violation involves recent drug use, as well as other circumstances of violation, and the circumstance of recent drug use is demonstrated to the court by satisfactory evidence and a finding made on the record, the court may, after receiving input from treatment and probation, if available, direct the defendant to enter a licensed detoxification or residential treatment facility, and if there is no bed immediately available in such a facility, the court may order that the defendant be confined in a county jail for detoxification purposes only, if the jail offers detoxification services, for a period not to exceed 10 days. The detoxification services must provide narcotic replacement therapy for those defendants presently actually receiving narcotic replacement therapy.

(E) If a defendant on probation at the effective date of this act for a nonviolent drug possession offense violates that probation a second time either by committing a nonviolent drug possession offense, or a misdemeanor for simple possession or use of drugs or drug paraphernalia, being present where drugs are used, or failure to register as a drug offender, or any activity similar to those listed in subdivision (d) of Section 1210, or by violating a drug-related condition of probation, and the state moves for a second time to revoke probation, the court shall conduct a hearing to determine whether probation shall be revoked. The trial court shall revoke probation if the alleged probation violation is proved and the state proves by a preponderance of the evidence either that the defendant poses a danger to the safety of others or that the defendant is unamenable to drug treatment. If the court does not revoke probation, it may modify or alter the treatment plan, and in addition, if the violation does not involve the recent use of drugs as a circumstance of the violation, including, but not limited to, violations relating to failure to appear at treatment or court, noncompliance with treatment, and failure to report for drug testing, the court may impose sanctions including jail sanctions that may not exceed 120 hours of continuous custody as a tool to enhance treatment compliance

and impose other changes in the terms and conditions of probation. The court shall consider, among other factors, the seriousness of the violation, previous treatment compliance, employment, education, vocational training, medical conditions, medical treatment including narcotics replacement treatment, and including the opinion of the defendant's licensed and treating physician if immediately available and presented at the hearing, child support obligations, and family responsibilities. The court shall consider additional conditions of probation, which may include, but are not limited to, community service and supervised work programs. If one of the circumstances of the violation involves recent drug use, as well as other circumstances of violation, and the circumstance of recent drug use is demonstrated to the court by satisfactory evidence and a finding made on the record, the court may, after receiving input from treatment and probation, if available, direct the defendant to enter a licensed detoxification or residential treatment facility, and if there is no bed immediately available in such a facility, the court may order that the defendant be confined in a county jail for detoxification purposes only, if the jail offers detoxification services, for a period not to exceed 10 days. The detoxification services must provide narcotic replacement therapy for those defendants presently actually receiving narcotic replacement therapy.

(F) If a defendant on probation at the effective date of this act for a nonviolent drug offense violates that probation a third or subsequent time either by committing a nonviolent drug possession offense, or by violating a drug-related condition of probation, and the state moves for a third or subsequent time to revoke probation, the court shall conduct a hearing to determine whether probation shall be revoked. If the alleged probation violation is proved, the defendant is not eligible for continued probation under subdivision (a), unless the court determines that the defendant is not a danger to the community and would benefit from further treatment under subdivision (a). The court may then either intensify or alter the treatment plan under subdivision (a) or transfer the defendant to a highly structured drug court. If the court continues the defendant in treatment under subdivision (a), or drug court, the court may impose appropriate sanctions including jail sanctions.

(g) The term "drug-related condition of probation" shall include a probationer's specific drug treatment regimen, employment, vocational training, educational programs, psychological counseling, and family counseling.

SEC. 8. Section 3063.1 of the Penal Code is amended to read:

3063.1. (a) Notwithstanding any other provision of law, and except as provided in subdivision (d), parole may not be suspended or revoked for commission of a nonviolent drug possession offense or for violating any drug-related condition of parole.

As an additional condition of parole for all such offenses or violations, the Parole Authority shall require participation in and completion of an appropriate drug treatment program. Vocational training, family

counseling and literacy training may be imposed as additional parole conditions.

The Parole Authority may require any person on parole who commits a nonviolent drug possession offense or violates any drug-related condition of parole, and who is reasonably able to do so, to contribute to the cost of his or her own placement in a drug treatment program.

(b) Subdivision (a) does not apply to:

(1) Any parolee who has been convicted of one or more serious or violent felonies in violation of subdivision (c) of Section 667.5 or Section 1192.7.

(2) Any parolee who, while on parole, commits one or more nonviolent drug possession offenses and is found to have concurrently committed a misdemeanor not related to the use of drugs or any felony.

(3) Any parolee who refuses drug treatment as a condition of parole.

(c) Within seven days of a finding that the parolee has either committed a nonviolent drug possession offense or violated any drug-related condition of parole, the Department of Corrections and Rehabilitation, Division of Adult Parole Operations shall notify the treatment provider designated to provide drug treatment under subdivision (a). Within 30 days thereafter the treatment provider shall prepare an individualized drug treatment plan and forward it to the Parole Authority and to the California Department of Corrections and Rehabilitation, Division of Adult Parole Operations agent responsible for supervising the parolee. On a quarterly basis after the parolee begins drug treatment, the treatment provider shall prepare and forward a progress report on the individual parolee to these entities and individuals.

(1) If at any point during the course of drug treatment the treatment provider notifies the Department of Corrections and Rehabilitation, Division of Adult Parole Operations that the parolee is unamenable to the drug treatment provided, but amenable to other drug treatments or related programs, the Department of Corrections and Rehabilitation, Division of Adult Parole Operations may act to modify the terms of parole to ensure that the parolee receives the alternative drug treatment or program.

(2) If at any point during the course of drug treatment the treatment provider notifies the Department of Corrections and Rehabilitation, Division of Adult Parole Operations that the parolee is unamenable to the drug treatment provided and all other forms of drug treatment provided pursuant to subdivision (b) of Section 1210 and the amenability factors described in subparagraph (B) of paragraph (3) of subdivision (e) of Section 1210.1, the Department of Corrections and Rehabilitation, Division of Adult Parole Operations may act to revoke parole. At the revocation hearing, parole may be revoked if it is proved that the parolee is unamenable to all drug treatment.

(3) Drug treatment services provided by subdivision (a) as a required condition of parole may not exceed 12 months, unless the Department of Corrections and Rehabilitation, Division of Adult Parole Operations makes a finding supported by the record that the continuation of treatment



services beyond 12 months is necessary for drug treatment to be successful. If that finding is made, the Department of Corrections and Rehabilitation, Division of Adult Parole Operations may order up to two six-month extensions of treatment services. The provision of treatment services under this act shall not exceed 24 months.

(d) (1) If parole is revoked pursuant to the provisions of this subdivision, the defendant may be incarcerated pursuant to otherwise applicable law without regard to the provisions of this section. Parole shall be revoked if the parole violation is proved and a preponderance of the evidence establishes that the parolee poses a danger to the safety of others.

(2) If a parolee receives drug treatment under subdivision (a), and during the course of drug treatment violates parole either by committing an offense other than a nonviolent drug possession offense, or by violating a non-drug-related condition of parole, and the Department of Corrections and Rehabilitation, Division of Adult Parole Operations acts to revoke parole, a hearing shall be conducted to determine whether parole shall be revoked.

Parole may be modified or revoked if the parole violation is proved.

(3) (A) If a parolee receives drug treatment under subdivision (a), and during the course of drug treatment violates parole either by committing a nonviolent drug possession offense, or a misdemeanor for simple possession or use of drugs or drug paraphernalia, being present where drugs are used, or failure to register as a drug offender, or any activity similar to those listed in subdivision (d) of Section 1210, or by violating a drug-related condition of parole, and the Department of Corrections and Rehabilitation, Division of Adult Parole Operations acts to revoke parole, a hearing shall be conducted to determine whether parole shall be revoked. Parole shall be revoked if the parole violation is proved and a preponderance of the evidence establishes that the parolee poses a danger to the safety of others. If parole is not revoked, the conditions of parole may be intensified to achieve the goals of drug treatment.

(B) If a parolee receives drug treatment under subdivision (a), and during the course of drug treatment for the second time violates that parole either by committing a nonviolent drug possession offense, or by violating a drug-related condition of parole, and the Department of Corrections and Rehabilitation, Division of Adult Parole Operations acts for a second time to revoke parole, a hearing shall be conducted to determine whether parole shall be revoked. If the alleged parole violation is proved, the parolee is not eligible for continued parole under any provision of this section and may be reincarcerated.

(C) If a parolee already on parole at the effective date of this act violates that parole either by committing a nonviolent drug possession offense, or a misdemeanor for simple possession or use of drugs or drug paraphernalia, being present where drugs are used, or failure to register as a drug offender, or any activity similar to those listed in paragraph (1) of subdivision (d) of Section 1210, or by violating a drug-related condition of parole, and the Department of Corrections and Rehabilitation, Division of

Adult Parole Operations acts to revoke parole, a hearing shall be conducted to determine whether parole shall be revoked. Parole shall be revoked if the parole violation is proved and a preponderance of the evidence establishes that the parolee poses a danger to the safety of others. If parole is not revoked, the conditions of parole may be modified to include participation in a drug treatment program as provided in subdivision (a). This paragraph does not apply to any parolee who at the effective date of this act has been convicted of one or more serious or violent felonies in violation of subdivision (c) of Section 667.5 or Section 1192.7.

(D) If a parolee already on parole at the effective date of this act violates that parole for the second time either by committing a nonviolent drug possession offense, or by violating a drug-related condition of parole, and the parole authority acts for a second time to revoke parole, a hearing shall be conducted to determine whether parole shall be revoked. If the alleged parole violation is proved, the parolee may be reincarcerated or the conditions of parole may be intensified to achieve the goals of drug treatment.

(e) The term “drug-related condition of parole” shall include a parolee’s specific drug treatment regimen, and, if ordered by the Department of Corrections and Rehabilitation, Division of Adult Parole Operations pursuant to this section, employment, vocational training, educational programs, psychological counseling, and family counseling.

SEC. 9. The provisions of this bill shall be applied prospectively. If any provision of this bill is found to be invalid, the entire legislative measure shall be submitted to the voters at the next statewide election.

SEC. 10. The Legislature finds and declares that the provisions of this act are consistent with the purposes of the Substance Abuse and Crime Prevention Act of 2000.

SEC. 11. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

SEC. 12. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure that the essential services provided under the Substance Abuse and Crime Prevention Act of 2000 continue to be provided without interruption, it is necessary that this bill go into immediate effect.